

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 09 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ALEXANDER GARCIA-
HERNANDEZ, aka Jose Garcia-
Hernandez,

Defendant - Appellant.

No. 05-50240

D.C. No. CR-04-01888-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted March 8, 2006^{**}
Pasadena, California

Before: HALL, THOMAS, and TALLMAN, Circuit Judges.

Jose Garcia-Hernandez appeals his conviction and sentence for being a
deported alien found in the United States, in violation of 8 U.S.C. § 1326. We

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

affirm. Because the parties are familiar with the factual and procedural history of the case, we will not recount it here.

Garcia-Hernandez argues that the district court erred in not suppressing his post-*Miranda* statements. He argues that his *Miranda* waiver was ineffective because his *Miranda* rights were read to him in the middle of the interrogation, and therefore his post-*Miranda* statements should have been suppressed. *See Missouri v. Seibert*, 542 U.S. 600 (2004) (plurality opinion); *United States v. Williams*, 435 F.3d 1148 (9th Cir. 2006).

Garcia-Hernandez was read his administrative rights when he was apprehended. He was then advised that his case would proceed as a criminal matter, not an administrative one, and was read his *Miranda* rights. He then knowingly and voluntarily waived his *Miranda* rights. Any error committed by the Border Patrol Agents was harmless, and any taint was dissipated because Garcia-Hernandez was fully informed of his rights and made a knowing and voluntary waiver of them.

The other issues raised by Garcia-Hernandez are without merit. We therefore affirm Garcia-Hernandez's conviction and sentence.

AFFIRMED.